

m/w/o

ORIGINAL

CLERK OF DISTRICT COURT
NORTHERN DIST. OF TX
FEB 11 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,

Petitioner,

v.

CARMEN E. GAITAN,

Respondent,

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§
§
§
§
§

DEPUTY CLERK

3-10 CV-1865M
Civil Action No.

**PETITION TO ENFORCE INTERNAL
REVENUE SERVICE SUMMONS**

The United States of America applies for an Order requiring Carmen E. Gaitan to appear, give testimony, and produce certain books, records and papers on her tax liabilities, as more fully set out in the attached Exhibit A. On May 12, 2010, Revenue Agent Lisa McRoberts, an authorized delegate of the Secretary of the Treasury and of the Commissioner of Internal Revenue, issued a summons to Carmen E. Gaitan under Section 7602 of the Internal Revenue Code, and the United States seeks enforcement of that summons.

I.

Carmen E. Gaitan resides at 3613 Frankford Road, Apt. 216, Dallas, Texas 75287.

II.

This Court has jurisdiction under Section 7604(a) of the Internal Revenue Code, 26 U.S.C. § 7604(a).

III.

On May 12, 2010, Revenue Agent Lisa McRoberts served a summons on Carmen E. Gaitan by attaching it to the door of Ms. Gaitan's last and usual place of abode, as authorized by Section 7603 of the Internal Revenue Code. The summons required Carmen E. Gaitan to appear, give testimony, and produce certain books, records and papers on her tax liabilities at 4050 Alpha Road, MC 5330 NDAL, Dallas, Texas, 75244 on June 1, 2010, at 12:30 p.m..

IV.

Carmen E. Gaitan did not comply with the requirements of the summons.

V.

Before issuing the summons, representatives of the Internal Revenue Service attempted to secure information from Carmen E. Gaitan with which to determine her federal income tax liabilities for the tax year 2008. Carmen E. Gaitan refused to produce that information. The summons was therefore issued under Section 7602 of the Internal Revenue Code. Carmen E. Gaitan has refused to comply with the summons to date.

VI.

Attached as Exhibit B is the Declaration of Revenue Agent Lisa McRoberts, attesting to the facts recited herein and showing that, upon information and belief, the documents and testimony sought are relevant and necessary to properly investigate and determine the federal tax liabilities of Carmen E. Gaitan for the tax year 2008.

VII.

The summons that is the subject matter of this action was issued for a legitimate purpose under the Internal Revenue Code, seeks information relevant for that purpose,

and seeks testimony and documents not presently in the possession of the Internal Revenue Service. The summons was issued in compliance with all applicable statutes, rules and regulations. There is no "Justice Department referral," as that term is defined in 26 U.S.C. § 7602(d), in effect on Carmen E. Gaitan concerning the summons for the tax years in question.

The United States of America respectfully requests:

(a) That this Court issue an order directing Carmen E. Gaitan to appear before this Court at a time fixed by the Court to show cause, if any, why an order should not issue directing Carmen E. Gaitan to appear before an officer of the Internal Revenue Service at a specified time and place and to give the testimony and produce the records requested in the summons for inspection and copying.

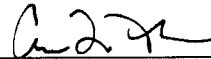
(b) That at the time of the show cause hearing, the Court issue an order directing Carmen E. Gaitan to appear before an officer of the Internal Revenue Service at a specified time and place and that Carmen E. Gaitan be required to give the testimony and produce the records requested in the summons.

(c) That the Order to Show Cause provide that service of the order, together with a copy of this Petition and the attached Exhibits thereto, be made by an agent of the Internal Revenue Service.

(d) That the United States have its costs of suit and all other and further relief as may be necessary or appropriate.

Respectfully submitted,

JAMES T. JACKS,
United States Attorney



ADAM L. FLICK
Special Assistant U.S. Attorney
State Bar No. 24042617
4050 Alpha Road, 13th Floor
MC 2000NWSAT
Dallas, Texas 75244
Tel.: (972) 308-7947
Fax: (972) 308-7960
ATTORNEY FOR PETITIONER



Summons

In the matter of Mario Cruz, SSN 453-97-8359 and Carmen E Gaitan, SSN 641-76-2764

Internal Revenue Service (Division): Small Business / Self-Employed (SBSE)

Industry/Area (name or number): Gulf States; Territory 3; Group 5 Exam 1163

Periods: For the Year Ended December 31, 2008

The Commissioner of Internal Revenue

To: Carmen E Gaitan

At: 3613 Frankford Road; APT 216; Dallas, TX 75287

You are hereby summoned and required to appear before Lisa McRoberts or her Designee an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.

Receipts, summary sheets, workpapers, and any other documents provided to your tax return preparer for preparation of your 2008 individual income tax return, Form 1040.

Schedules, summary sheets, workpapers, and any other documents that your tax return preparer provided to you during the preparation of your 2008 individual income tax return, Form 1040.

Do not write in this space

Business address and telephone number of IRS officer before whom you are to appear:

4050 Alpha Rd.; MC 5330 NDAL; Dallas, TX 75244

(972) 308-1298

Place and time for appearance at 4050 Alpha Road; Dallas, TX 75244



Department of the Treasury
Internal Revenue Service

www.irs.gov

Form 2039 (Rev. 12-2008)
Catalog Number 21405J

on the 1st day of June, 2010 at 12:30 o'clock P m.

Issued under authority of the Internal Revenue Code this 12th ^(year) day of May, 2010 ^(year)

Signature of issuing officer

Signature of approving officer (if applicable)

Revenue Agent

Title

Group Manager

Title

Original — to be kept by IRS

Exhibit - A



Service of Summons, Notice and Recordkeeper Certificates

(Pursuant to section 7603, Internal Revenue Code)

I certify that I served the summons shown on the front of this form on:

Date May 12, 2010	Time 2:30 PM
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**How
Summons
Was
Served**

1. ☐ I certify that I handed a copy of the summons, which contained the attestation required by § 7603, to the person to whom it was directed.

2. ☒ I certify that I left a copy of the summons, which contained the attestation required by § 7603, at the last and usual place of abode of the person to whom it was directed. I left the copy with the following person (if any):

3. ☐ I certify that I sent a copy of the summons, which contained the attestation required by § 7603, by certified or registered mail to the last known address of the person to whom it was directed, that person being a third-party recordkeeper within the meaning of § 7603(b). I sent the summons to the following address: Carmen E Gaitan
3613 Frankford Road; APT 216; Dallas, TX 75287

Signature

Title
Revenue Agent

4. This certificate is made to show compliance with IRC Section 7609. This certificate does not apply to summonses served on any officer or employee of the person to whose liability the summons relates nor to summonses in aid of collection, to determine the identity of a person having a numbered account or similar arrangement, or to determine

whether or not records of the business transactions or affairs of an identified person have been made or kept.

I certify that, within 3 days of serving the summons, I gave notice (Part D of Form 2039) to the person named below on the date and in the manner indicated.

Date of giving Notice: May 12, 2010

Time: _____

Name of Noticee: Carmen E Gaitan

Address of Noticee (if mailed): 3613 Frankford Road; APT 216; Dallas, TX 75287

**How
Notice
Was
Given**

☐ I gave notice by certified or registered mail to the last known address of the noticee.

☒ I left the notice at the last and usual place of abode of the noticee. I left the copy with the following person (if any):

☐ I gave notice by handing it to the noticee.

☐ In the absence of a last known address of the noticee, I left the notice with the person summoned.

☐ No notice is required.

Signature

Title
Revenue Agent

I certify that the period prescribed for beginning a proceeding to quash this summons has expired and that no such proceeding was instituted or that the noticee consents to the examination.

Signature

Title
Revenue Agent

DECLARATION

Lisa McRoberts declares:

1. I, Lisa McRoberts, am a duly commissioned Revenue Agent employed in the Small Business/Self-Employed Division of Group 1163 in Territory 3 of the Internal Revenue Service at 4050 Alpha Road, Dallas, TX.

2. In my capacity as a Revenue Agent, I am conducting an investigation for the purpose of ascertaining the income tax liability of Carmen E. Gaitan for the year ending December 31, 2008.

3. As part of the above investigation and in furtherance thereof, pursuant to 26 U.S.C. § 7602, on May 12, 2010, I issued an Internal Revenue Service Summons, Internal Revenue Service Form 2039, to Carmen E. Gaitan directing her to appear before me on June 1, 2010, to testify and to produce for examination books, papers, records or other data as described in said summons. The summons is attached to the petition as Exhibit A.

4. In accordance with 26 U.S.C. § 7603, on May 12, 2010, I served an attested copy of the Internal Revenue Service summons described in Paragraph 3 above on Carmen E. Gaitan by attaching it to her front door.

5. On May 21, 2010, certified mail package was received in name of Carmen E. Gaitan. Included in the package was a partially completed Form 2848 completed by Carmen E. Gaitan's return preparer, Mr. Joseph Rivas, who indicated he was a CPA in section 2 of the Form 2848. Also included was a schedule of items deducted on Carmen E. Gaitan's return but no documentation for said expenses,

Exhibit - B

with many appearing to be nondeductible items with no explanation of why they would be deductible expenses.

6. On May 25, 2010, I sent a certified mail response to package received on May 21, 2010 informing Carmen E. Gaitan that the information received was not sufficient and that she was still required to appear on June 1, 2010 per summons delivered on May 12, 2010. The response also explained that she could have a representative but needed to fill out a complete Form 2848 and have a valid representative, with review of Texas State Board of Public Accountancy indicating Mr. Rivas was not a valid CPA. The response detailed that in the event she chose to have a representative, she could bring the completed form to her appointment but that she would still be required to appear in addition to the representative in order to comply with the summons.

7. On June 1, 2010, Carmen E. Gaitan did not appear in response to the summons. Carmen E. Gaitan's refusal to comply with the summons continues to the date of this Declaration.

8. It is relevant and necessary to examine the books, records, and other papers demanded by the summons and to take the testimony in respect thereof in order to properly investigate the income tax liability of Carmen E. Gaitan for the year ending December 31, 2008.

9. The testimony and documents sought by the above-described summons are not presently in the possession of the Internal Revenue Service.

10. All administrative steps required by the Internal Revenue Code for issuance and service of a summons have been taken.

11. There is no "Justice Department referral" in effect with respect to Respondent or any other persons whose tax liability is at issue with regard to this summons for the tax years 2008, as that term is defined in 26 U.S.C. § 7602(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24 day of June, 2010.



Lisa McRoberts
Revenue Agent

JS 44 (Rev. 12/07)

CIVIL COVER SHEET **3-10 CV-1865M**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

A.L.Flick, SAUSA, TX St. Bar # 24042617
4050 Alpha Rd., Dallas, TX 75244 Tel. 972-308-7900

DEFENDANTS

Carmen E. Gaitan

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Respondent's Address: CLERK, U.S. DISTRICT COURT
3613 Frankford Road, Dallas, Texas 75226

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

26 U.S.C. Sections 7604(a) and 7402(a)
Brief description of cause:
Enforcement of IRS Summons

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) PENDING OR CLOSED**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____